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APPLICATION NO.	FI	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,659	(	02/09/2001	Jacob L. Phillips	10064/002002	7265
20985	7590	11/24/2003		EXAMINER	
FISH & RI 12390 EL C		,	FRIDIE JR, WILLMON		
SAN DIEGO				ART UNIT	PAPER NUMBER
	•			3722	

DATE MAILED: 11/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \$ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Estimations of time may be available under the provisions of \$7 CFR 1.136(a). In no event, however, may a reply be timely fited the provision of the provisions of \$7 CFR 1.136(a). In no event, however, may a reply be timely fited the period for reply specified above is last share bridy (30) stays, a reply within the statutory minimation of the reply is appetited spots, the maximum statutory parted will paylor and will explosely (60 MONTHS from the mailing date of this communication.  Felline to reply within the set of sefencies period for reply vall, by statutory parted will apply and will explosely (60 MONTHS from the mailing date of this communication.  Felline to reply within the set of sefencies period for reply vall, by statutor, cause the application to become ABANCONED (30 U.S. C. § 133).  Responsive to communication(s) filed on \$\textit{0.95}\text		Application No.	Applicant(s)
The MAILING DATE of this communication appears on the cover sheet with the correspondence address— eriod for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  ANY reply received by the Communication of the communication.  THE VIO pands for the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the communication.  THE VIO pands of the singular date of the singular date of the communication.  THE VIO pands of the singular date of the communication of the singular date of the commu		09/779,659	PHILLIPS ET AL.
The MAILING DATE of this communication appears on the cover sheet with the correspondence address—end of reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Ederations of them may be available under the provisions of 37 CPR 1.136(a). In no avant, however, may a reply be limely filed with 100 (6) MGMTHS tone them the provisions of 37 CPR 1.136(a). In no avant, however, may a reply be limely filed with 100 (6) MGMTHS tone has under the provisions of 37 CPR 1.136(a). In no avant, however, may a reply be limely dided of this communication.  If NO penido froig's is specified south to provisions of 37 CPR 1.136(b).  If NO penido froig's is specified south, be maximum suitation penidovil langly and utilized to 100 (MGMTHS tone has mailing date of this communication, even if the specification to become ABAHCONED (35 U.S.C.§ 131).  Status  1) □ Responsive to communication(s) filed on 09 February 2001.  22] □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Isposition of Claims  4) □ Claim(s) 42.6f is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5□ Claim(s) is/are allowed.  5□ Claim(s) 42.6f is/are rejected.  7□ Claim(s) is/are objected to by the Examiner.  10□ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  111 □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTC-152.  111 □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  12□ Acknowledgment	Office Action Summary	Examiner	Art Unit
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  THE MALLING DATE OF THIS COMMUNICATION.  If the period for reply replicated source is less than thirty cold) days, a reply within the statetory minimum of thirty (50) days will be considered timely.  If NO period for reply is ascended above, the maniferant statetory period will apply and will expres SIX (8) MONTHS form the malling date of the communication.  If NO period for reply is ascended above, the maniferant statetory period will apply and will expres SIX (8) MONTHS form the malling date of the communication.  If NO period for reply is ascended above, the maniferant statetory period will apply and will expres SIX (8) MONTHS form the malling date of the communication.  If NO period for reply is ascended above, the maniferant statetory period will apply and will expres SIX (8) MONTHS form the malling date of the communication.  Any reply readed by the Official state them these months after the malling date of this communication, even if timely filed, many rectains any assets of the communication of the		Willmon Fridie,Jr.	3722
## Extensions of time may be available under the provisions of 3 CFR 1.35(a). In no event, however, may a reply be timely filed after 50x (6) MCMTHS from the mailing date of this communication, reply within the statistory minimum of thiny (50) laps will be considered friendly after 50x (6) MCMTHS from the mailing date of this communication, reply within the statistory handward that the mailing date of this communication.  Failure for reply within the set or extended period for reply will, by statutor, cause the application to become ABARDONED (35 U.S.C. § 133). Any reply reacted by the Office the time throe medials after the mailing date of this communication, even if timely filed, may reduce any contract patient term adjustment. See 37 CFR 1.76(b).  ### Responsive to communication(s) filed on <u>09 February 2001</u> .  ### Responsive to communication(s) filed on <u>09 February 2001</u> .  ### Responsive to communication is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  ### Claim(s) 42-61 is/are pending in the application.  ### Applicant may not request he application and/or election requirement.  ### Claim(s) 42-61 is/are rejected.  ### Claim(s) is/are allowed.  ### Claim(s) is/are allowed.  ### Claim(s) are subject to restriction and/or election requirement.  ### Proplication Papers  ### Proplication Pape	The MAILING DATE of this commu Period for Reply	nication appears on the cover sheet w	rith the correspondence address
2a) ☐ This action is FINAL.  2b) ☐ This action is non-final.  3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  isposition of Claims  4) ☐ Claim(s) 42-61 is/are pending in the application.  4a) Of the above claim(s)	THE MAILING DATE OF THIS COMMUN  - Extensions of time may be available under the provision after SIX (6) MONTHS from the mailing date of this com  - If the period for reply specified above is less than thirty (  If NO period for reply is specified above, the maximum is a Failure to reply within the set or extended period for reply.  - Any reply received by the Office later than three months.	IICATION. s of 37 CFR 1.136(a). In no event, however, may a munication. 30) days, a reply within the statutory minimum of thistatutory period will apply and will expire SIX (6) MOI y will, by statute, cause the application to become A	reply be timely filed rly (30) days will be considered timely. NTHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).
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Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  riority under 35 U.S.C. §§ 119 and 120  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No.  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  a) The translation of the foreign language provisional application has been received.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  14) Interview Summary (PTO-413) Paper No(s).  Notice of References Cited (PTO-892)  Notice of Informal Patent Application (PTO-152)  Information Disclosure Statement(s) (PTO-1449) Paper No(s).  14) Other:	•		by the Evaminer
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Application/Control Number: 09/779,659

Art Unit: 3722

## **DETAILED ACTION**

## Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 42-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6186553. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite the structure and method of producing a theme calendar.

## Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willmon Fridie, Jr. whose telephone number is 703 308 1866. The examiner can normally be reached on M-F (8:30am-6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea Wellington can be reached on 703 308 2159. The fax phone number for the organization where this application or proceeding is assigned is 703 872 9306.

Art Unit: 3722

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.

Willmon Fridie,Jr. Primary Examiner Art Unit 3722

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